IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 163 of 2003
in
SPECIAL CIVIL APPLICATION No 10078 of 2002
with
CIVIL APPLICATION No 1155 of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

and

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DILIP RATILAL PATEL

Versus

GUJARAT STATE FINANCIAL CORP. THRO'MANAGING DIRECTOR

Appearance:
1. LETTERS PATENT APPEAL No. 163 of 2003
MR PM THAKKAR, Sr. Advocate for M/S THAKKAR ASSOC.
for Appellant No.
MS SM AHUJA for Appellant No.
MR KM PATEL for Respondent No. 1

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE A.L.DAVE

Date of decision: 23/07/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

1. Admit. Heard the learned Senior Advocate Mr.P.M.Thakkar and learned Advocate Mrs.Sangita N. Pahwa for the appellant and learned Advocate Mr.K.M.Patel for the respondent.

2. What is the relevant rule, provision, and interpretation, in the event of the disciplinary authority directing further action of FRESH or FURTHER ENQUIRY, upon the strength of the report of the enquiry officer, is the main heart and the hub of the entire Letters Patent Appeal under clause 15 of the Letters Patent Appeal on hand. A special reference to the provisions of Rule 10(1) of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 (for short `the Rules') point to the interpretation made by the respondent - Gujarat State Financial Corporation (for short "GSFC"). The disciplinary authority, upon consideration and evaluation of the enquiry report made after completion and conclusion of regular departmental enquiry in respect of alleged serious irregularities of Financial Services Division at the Head Office of the Corporation against the appellant Mr.D.R.Patel, General Manager-I, directed for fresh regular departmental enquiry i.e. de novo enquiry on the charges levelled in the charge-sheet. The above order, on being questioned in this Court at the instance of the appellant-delinquent by way of Special Civil Application No.10078 of 2002, upon judicial scrutiny, was confirmed by the learned Single Judge, which prompted the delinquent to invoke the powers of clause 15 of the Letters Patent in this Letters Patent Appeal challenging the order of learned Single Judge dated 26-12-2002. In short, a very short, but significant question, i.e., whether a `FRESH ENQUIRY' or a `FURTHER ENQUIRY' against the delinquent is permissible under the Rules, arises for our consideration, examination and evaluation and resultant adjudication.

3. We have been addressed at a greater length by the learned counsels appearing for the parties in support of the rival versions and we have been taken through the entire record during the course of submissions by the counsels and they have also placed reliance on case law to which reference will be made by us hereinafter at an appropriate stage as and when required for the consideration of the issue. We have also examined the text, tenor and texture of the impugned order of the Managing Director, GSFC, directing, upon examination of the report of the enquiry officer, for fresh further

enquiry and also the impugned judgment of the learned Single Judge, which is under challenge before us. We have also considered threadbare the case law relied on by both the sides.

4. A short, but necessary and relevant spectre on factual matrix leading to the rise of this Letters Patent Appeal on hand may be narrated so as to be enlightened on the aforesaid main issue involved in this Letters Patent Appeal. Following factual aspects are no longer in controversy which also played important and material role in decision making process of the short issue before us.

Sr.No.	Facts	Date
1.	Appellant is discharging duties as General Manager with the respondent Corporation	since 1990
2.	Upon allegations of serious financial irregularities in discharge of his duties as General Manager-I, Mr.Patel came to be charge-sheeted for the period from	25-11-1998 to 16-12-1998
3.	Enquiry officer was appointed by the disciplinary authority to conduct enquiry into the allegations made in the charge sheet	16-11-1999
4.	Enquiry officer submitted his enquiry report whereby the appellant-delinquent came to be exonerated from all the charges against him.	09-03-2001
5.	Disciplinary authority upon consideration of the report of the enquiry officer decided to direct fresh further enquiry finding that the enquiry officer had not applied his mind properly	12-09-2002
6.	Decision of the Managing Director came to be questioned by the delinquent Mr.Patel by filing the Special Civil Application in this Court unsuccessfully. The decision of the Court is against Mr.Patel and the direction of the Managing	

Director for fresh further enquiry into the allegations against the delinquent, i.e. de novo enquiry, came to be affirmed and confirmed by the learned Single Judge 26-12-2002

7. Relevant governing Rule provision is Rule 10(1) of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 and there is no dispute about this aspect. There is also no dispute about the aspect that Rule 15(1)(2) of the Central Civil Services Rules and the provisions contained therein are virtually identical to the Rules applicable to the case on hand. --

8. Rule 27(c)(6) of the Central Reserve Police Force Rules, 1955 does not clearly provide only for either fresh or further enquiry in such a situational reality.

---

5. With a view to appreciate and understand with possible clarity and humility the said Rules are highlighted verbatim (emphasis by us) for the purpose of consideration as they have material bearing in the decision making process on the sole issue focussed in this Letters Patent Appeal:-

Rule 27(c)(6) of Central Reserve Police Force Rules, 1955:

"27(c) Procedure for conducting a departmental enquiry ....

(6) If the commandant has himself held the inquiry, he shall record his finding and pass orders where he has power to do so. If the inquiry has been held by any Officer other than the commandant, the officer conducting inquiry shall forward his report together with the proceedings, to the commandant who shall record his findings and pass orders, where he has power to do so."

Rule 15(1) & (2) of the Central Civil Services Rules:

"15(1) The Disciplinary Authority if it is not itself the inquiring authority may, for the

reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14 as far as may be.

15(2) The disciplinary authority shall if it disagrees with the findings of the inquiring authority on any article of charge, record its reason for such disagreement and record its own finding on such charge, if the evidence on record is sufficient for the purpose."

Rule 10(1) and (2) of the Gujarat Civil Services (Discipline and Appeal Rules, 1971:

"10(1) The disciplinary authority if it is not itself inquiry authority may, for reasons to be recorded by it in writing, remit the case to the inquiry authority for further inquiry and report and the inquiry authority shall there upon proceed to hold the further inquiry according to the provisions of Rule 9 as far as may be.

(10(2) The disciplinary authority shall, if it disagrees with the findings of the inquiry authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge if the evidence on record is sufficient for the purpose."

6. Undoubtedly, the interpretation and application of the two expressions "FRESH" and "FURTHER" have thin margin and line in literary, functionary and jurisprudential sense. On behalf of the appellant, it has been vehemently contended that further inquiry and not a fresh inquiry is the rule provision under Rule 10(1) of the Rules, and therefore the direction contained in the impugned order of the Managing Director of the respondent Corporation for fresh inquiry after consideration of the report of the inquiry officer is neither legal nor reasonable nor permissible and therefore perverse. As against that, the learned advocate appearing for the respondent Corporation submitted that the direction given by the Managing Director for fresh inquiry and which has been confirmed by the learned Single Judge upon judicial review is quite reasonable and justified requiring no interference at the hands of this Court in exercise of its powers under clause 15 of the Letters Patent. In support of this submission, reliance is placed on the decision of Union of India and others v. P. Thayagarajan (1999) 1 Supreme

Court Cases 733. On the other hand learned counsel for the appellant has placed strong reliance on the decision of the Apex Court rendered by a Constitutional Bench in K.R.Deb v The Collector of Central Excise, Shillong AIR 1971 Supreme Court 1447. In this decision, the question that centered around was about the interpretation of Rule 15(1) of the Central Civil Services Rules which is virtually pari pasu to the relevant rule applicable to the case on hand, i.e. Rule 10(1) of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971.

7. It has been vividly expounded proposition of law that Rule 15(1) of the Central Civil Services Rules, is almost pari pasu to the Rule 10(1) of the Rules applicable to the present case. It is in this context that it will be not only advisable, but imperative to refer to the relevant observations in the judgment for profit. In paragraph 13, the Apex Court made the following observations:

> "13.It seems to us that Rule 15, on the face of it, really provides for one inquiry, but it may be possible if in a particular case there has been no proper inquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the inquiry officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9."

8. Relying upon P. Thyagarajan case (supra) the learned Single Judge held in the said judgment that the possibility of holding an inquiry afresh, in a given situation, if the interest of justice so requires, can not been ruled out. With due respect, this proposition does not seem to be in consonance with the rule provision of Rule 10 of the Rules of 1971, which is applicable to the facts of the present case. In the decision of P.Thyagarajan (supra), the relevant Rule under consideration was Rule 27(c)(6) of the Central Reserve Police Force Rules, 1955. After having given our anxious consideration to the rule provision of Rule 27(c)(6) of the Central Reserve Police Force Rules, 1955, it becomes

clear that de novo inquiry can be directed by the disciplinary authority. But, the same is not the rule provision in Rule 10(1) of the Rules governing the case on hand. While interpreting Rule 15(1) of the Central Civil Services Rules, the Constitutional Bench of the Supreme Court in K.R.Deb case (supra) unambiguously and in clear judicial exposition of Rule 15(1), which is identical to Rule 10(1) of the Rules and applicable to the present case, held that Rule 15 does not contemplate successive enquiries, if there is some defect, default, discrepancy or lacunae. Rule 15 on the face of it really provides for one inquiry, but it may be possible, that if in a particular case, where there has been no proper inquiry because of some serious defect having crept in the inquiry proceedings or where some of the witnesses who are important were not available at the time of inquiry or were not examined for some reasons and in such other eventualities and contingencies, it is open for the disciplinary authority to direct the enquiry officer to record further evidence. It is, therefore, very clear and there is no doubt in our mind that in Rule 15(1) of Central Civil Services Rules, which is almost pari pasu to Rule 10(1) of the Rules, which are governing the present case, there is no provision for totally scraping of the inquiry report or setting aside the previous enquiry on such grounds. However, it may be noted that the disciplinary authority is empowered and has enough power to reexamine and reconsider the evidence itself and also to direct for holding further inquiry.

9. Our attention has also been drawn to the decision of this Court rendered by a Single Bench in Hiralal K. Joshi v. State of Gujarat and another 30(2) GLR 1183. In a similar case, the same issue of interpretation of Rule 10 of the Rules was involved and this Court has ruled that the rule provision of Rule 10 of the Rules does not contemplate to holding of a fresh departmental inquiry or disciplinary proceeding against a public servant after a report was submitted by the enquiry officer. The Single Bench decision in Hiralal K. Joshi case (supra) also lends material reinforcement to the proposition we have propounded. It may also be, at the cost of repetition, clarified that the relevant provisions of Central Civil Services Rules, as stated earlier, are similar to the relevant provisions of Rules with which this Court is concerned in this Letters Patent Appeal. The Single Bench had also placed strong reliance on the decision rendered in K.R.Deb case (supra). In short, Rule 10 of the rules applicable in Gujarat and governing the present case contemplates only one inquiry and not successive inquiry or inquiries. However, in

view of the provisions of Rule 10(1), the disciplinary authority is empowered to direct for further inquiry, upon consideration and examination of the report of the enquiry officer, and upon finding and holding that the persons required to be examined were important and were not examined or some defect, lacunae or discrepancy which has resulted into miscarriage of justice. It is in this context, with due respect, the view taken and propounded by the learned Single Judge in this case is not laying down correct proposition of law. It may be possible that attention of the learned Single Judge was not properly drawn to the factum that it is Rule 15 of the Central Civil Services Rules which is similar to Rule 10 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971, and not Rule 27(c)(6) of the Central Reserve Police Force Rules, 1955. Be that as it may, the order of the Managing Director, upon interpreting Rule 10(1) of the Rules, directing de novo inquiry and which has been confirmed in the writ petition by the impugned judgment, in our clear opinion, runs diametrically opposite to the provisions of Rule 10(1) of the Rules on its plain meaning and interpretation than the expression "fresh inquiry", and therefore, the impugned order of the Managing Director of the respondent Corporation and the impugned judgment of the learned Single Judge are required to be quashed and set aside. We, therefore, quash and set aside both of them.

10. In the result, both, the Appeal and the Civil Application, shall stand allowed. Since the orders impugned herein are quashed and set aside because they contemplate `fresh inquiry' de hors the provision of the Rules, it will be open for the respondent Corporation to take appropriate action if so desired in the legal exposition of Rule 10(1) of the Rules made hereinbefore.

(J.N. BHATT, ACTING C.J.)

(A.L. DAVE, J.)

[SNDEVU]
P.S.